



COMMONWEALTH OF MASSACHUSETTS
**Board of Registration
of
Hazardous Waste Site Cleanup Professionals**

MINUTES
of
BOARD MEETING
Held on
May 23, 2007

Meeting Location: Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, Mass.

Prepared by: A. Fierce

[Approved: June 20, 2007]

1. **Call to Order:** Chairperson Janine Commerford called the meeting to order at 4:09 p.m. The other Board members present were Gail Batchelder, Deborah Farnsworth, Kirk Franklin, Christophe Henry, Gretchen Latowsky, Paul Mullen, Debbie Phillips, Kelley Race, and Debra Stake. Board member Robert Luhrs was absent. The LSP Board staff members present were Allan Fierce, Terry Wood, Lynn Read, Jan Reitsma, Brian Quinlan, and Al Wyman. Also present were Wes Stimpson, the Executive Director of the LSP Association, and Lawrence Feldman, the president-elect of the LSP Association.
2. **Announcements:** There were no announcements.
3. **Agenda:** The Board agreed to follow the agenda as drafted.
4. **Minutes:** The Board reviewed the draft minutes for the meeting of the Board held on April 18, 2007. Two corrective amendments were agreed to on page 9. **A motion was made and seconded to approve the minutes as amended. The motion was approved unanimously.**
5. **Reports from Previous Quasi-judicial Sessions:** Ms. Commerford requested and received unanimous consent to publish in the minutes of this meeting the following three reports from previous quasi-judicial sessions.

Minutes of LSP Board Meeting, May 23, 2007

At a quasi-judicial session held on March 9, 2006, the members of the Complaint Review Team for Complaint 02C-08 (Ms. Commerford, Mr. Feldman, and Mr. Fierce,) presented their Report summarizing the findings of their preliminary investigation. The CRT recommended that the Board find that sufficient grounds exist to initiate disciplinary action against this LSP. Thereafter, the Board asked the CRT to present their recommendation regarding what type of discipline or other disposition the Board should impose. Throughout this discussion, the LSP's name was not disclosed.

After answering questions about their report and recommendations, the CRT members left the room.

The following non-recused members of the Board participated in this quasi-judicial session: Ms. Batchelder, Ms. Farnsworth, Mr. Franklin, Mr. Henry, Ms. Latowsky, Mr. Luhrs, Mr. Mullen, Ms. Phillips, Ms. Race, and Ms. Stake.

The ten remaining Board members then discussed the CRT's report and recommendations. At the conclusion of the discussion, the Board voted unanimously that, based on the preliminary investigation, sufficient grounds existed to take disciplinary action against this LSP.

The CRT's attorney was directed to file an Order To Show Cause as soon as possible.

The Board members then discussed and agreed to the disciplinary terms that they would find acceptable, based on the grounds for discipline found by the CRT, if these terms were included in an Administrative Consent Order ("ACO") that resolved this matter by agreement before the adjudicatory hearing process concluded.

Thereafter, on May 25, 2006, an Order To Show Cause was served on the LSP. The Respondent, through his attorney, submitted an Answer disputing various assertions in the Order.

Thereafter, before this matter proceeded to an adjudicatory hearing at the Division of Administrative Law Appeals, the parties reached agreement on the terms of an ACO that met the terms for resolution of this matter previously established by the Board. The parties prepared an ACO, which was signed by the Respondent and, on behalf of the Board, by Ms. Stake on October 12, 2006.

Pursuant to this ACO, the Respondent has received a Public Censure.

Now that this matter has been concluded, the LSP's name, Thomas Jordan, is being made public.

Administrative Consent Order -- Complaint 01C-10

At a quasi-judicial session held on January 22, 2007, two of the CRT members for Complaint 01C-10 (Ms. Commerford and Mr. Fierce) presented terms of a proposed Administrative Consent Order (“ACO”) that they said would resolve this complaint, if approved by the Board. The other members of the Board who were present were as follows: Ms. Batchelder, Ms. Farnsworth, Mr. Franklin, Mr. Luhrs, Ms. Phillips, and Ms. Race. Mr. Henry, Ms. Latowsky, Mr. Mullen, and Ms. Stake (who was the third member of the CRT) were absent.

The CRT members explained that this Complaint, filed by MassDEP in 2001, alleged deficiencies in the Respondent LSP’s work. In responding to this Complaint, the Respondent denied the allegations. On January 30, 2005, while the investigation was underway but not complete, the LSP’s license lapsed when the LSP failed to renew it. In addition, because the Respondent no longer wished to be an LSP, he did not renew his license during the year after it lapsed. In 2006, the CRT and the Respondent expressed their mutual interest in a resolution of this Complaint without conducting further time-consuming investigation or adjudicatory proceedings.

The CRT members explained that during the negotiations with this former LSP, an attorney represented the Respondent. The resolution agreed to between the parties, and for which they sought the Board’s approval, was an ACO in which this former LSP agreed never to reapply for an LSP license.

After presenting the terms of this proposed ACO, the CRT members left the room.

Thereafter, the Board discussed the proposed resolution. At the conclusion of discussion, a motion was made and seconded to authorize the signing of an ACO in which the Respondent agreed never to reapply. The vote in favor of this motion was unanimous.

The Board authorized Mr. Luhrs, on behalf of the Board, to sign the ACO. The ACO was subsequently signed and took effect on March 12, 2007. As a result, the Respondent is prohibited from reapplying for an LSP license.

Throughout this discussion, the Respondent LSP’s name was kept confidential. Now that this matter has been closed, the LSP’s name, Donald L. Corey, is being made public.

Dismissal of Complaint 06C-06

At a quasi-judicial session held on March 5, 2007, the members of the Complaint Review Team (“CRT”) for Complaint 06C-06 (Mr. Franklin, Ms. Phillips, and Ms. Wood) presented their Report summarizing the findings of their preliminary investigation. During this presentation, the LSP’s name was not disclosed.

The following seven non-recused members of the Board were also present and participated in this quasi-judicial session: Ms. Batchelder, Ms. Farnsworth, Mr. Henry, Ms. Latowsky, Mr. Luhrs, Ms. Race, and Ms. Stake. Ms. Commerford and Mr. Mullen were absent.

At the conclusion of the CRT's presentation, the CRT members left the room. The seven remaining Board members then discussed the report. At the conclusion of discussion, a motion was made and seconded that (1) based on the preliminary investigation, sufficient grounds did not exist to take disciplinary action against this LSP and (2) the complaint should be dismissed with a warning. The motion was approved unanimously.

The CRT's attorney was directed to draft a draft dismissal letter for review by the Board at the next quasi-judicial session.

At a quasi-judicial session of the Board on April 18, 2007, the non-recused Board members present (Ms. Batchelder, Ms. Commerford, Ms. Latowsky, Mr. Luhrs, Mr. Mullen, Ms. Race, and Ms. Stake) reviewed and approved the draft dismissal letter with a warning. In the draft letter, the LSP's name and other identifying information were redacted, and the LSP's name was not disclosed.

The dismissal letter with a warning was subsequently signed and mailed to the LSP.

Now that this complaint has been dismissed, the LSP's name, David Billo, can be made public.

6. **Decisions Regarding License Applicants:** The staff presented the following Application Docket:

<u>Docket No. 1:</u> The applicant's name, company name, application number, and Application Review Panel recommendation were read into the record:				
			<u>ARP</u>	<u>REC.</u>
Douglas Lindsay	LFR Inc.	#9383	201	D

No members were recused.

A motion was made and seconded that the recommendation from ARP #201 be accepted, i.e., that the application submitted by Mr. Lindsay be denied for the reasons stated in the draft denial letter and that he be found ineligible to take an exam. The motion was approved unanimously.

7. **License Renewal Applications:** The staff presented the following License Renewal Dockets:

Renewal Docket #1

Renewal Date: April 30, 2007
Have met all requirements for renewal.
New Renewal Date: April 30, 2010

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|-----------------------|-------|
| 1. Corey, Douglas M. | #9310 |
| 2. Moore, Jonathan S. | #5928 |
| 3. Parker, Scott | #9969 |

Renewal Docket #2

Renewal Date: April 30, 2007
Qualify for and are requesting a 90-day extension.

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|------------------------|-------|
| 1. Ashley, Ernest | #4894 |
| 2. Falk, Linda S. | #8624 |
| 3. Fogarty, Katherine | #6645 |
| 4. Giordano, Edward F. | #5448 |
| 5. Sullivan, James K. | #1259 |

Renewal Docket #3

Renewal Date: October 30, 2006
Licenses expired on 1/28/07 after a 90-day extension.
Have now completed all requirements for renewal.
New Renewal Date: July 30, 2010

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|-----------------------|-------|
| 1. Hughto, Richard J. | #2261 |
| 2. Regan, Terence | #3352 |

A motion was made and seconded to grant a 90-day extension to the LSPs on Renewal Docket #2 and to renew the licenses of the LSPs on Renewal Dockets #1 and #3 for a three-year period ending on the dates indicated. The motion was approved unanimously.

8. Other Licensing-Related Matters:

- A. New Panel Assignments and Scheduling.** Mr. Quinlan sought and obtained volunteers for Application Review Panel #203 (Ms. Farnsworth, Mr. Henry, and Ms. Stake).
- B. Appeals Status Report.** Ms. Wood reported that the one pending appeal has been filed at DALA, and the parties are awaiting the scheduling of a prehearing conference.

C. Inactive Status Report. The staff reported the following:

1. Failed to Return to Active Status Within Two Years – License Expired:
 - Sandra Hebert (#1700) on 4/29/07
2. Placed on Inactive Status at LSP's Request:
 - Gary W. Siegel (#1523) at c.o.b. on 5/2/07

9. Examinations:

- A. New Licensees.** Mr. Fierce reported that the following approved applicants passed the licensing exam administered on May 21, 2007, and are now LSPs:

<u>Name</u>	<u>Licensure Date</u>	<u>Lic. No.</u>
Robert A. Francis	5/22/07	#5022
Brian J. Miller	5/22/07	#2961

Mr. Fierce noted that the total number of Active LSPs as of this date was 560.

- B. Next LSP Exam.** Mr. Fierce reported that the next licensing exam has yet to be scheduled.
- C. LSP Exam Update Project.** Mr. Fierce and Ms. Commerford reported that the Board has entered into a contract for psychometric services with Kevin Sweeney. Mr. Sweeney will meet with the Technical Advisors on May 25 to begin planning the cut-score workshop needed to establish passing scores for the Board's updated, revised exams. The workshop could take place as soon as next month. Additional Board members will be asked to participate in the cut-score workshop.
- D. Challenge Review.** Mr. Fierce reported that an approved applicant had recently challenged five questions on the LSP exam after failing to pass it. Pursuant to the Board's standard procedure, Mr. Fierce said that he had assembled a five-member "Challenge Review Team" to review the challenges and recommend to the Board whether to accept or reject them. Of the five members on the team, two were members of the Board, two were from DEP, and one was a private-sector LSP. Also, of the five members, two had participated in the drafting of these questions as members of the Technical Advisor team, and three had not participated in the drafting of these questions.

Mr. Fierce said that the Challenge Review Team had met earlier in the day and reviewed the five questions challenged and the written information the examinee had submitted to support each challenge. At the conclusion of their review, the members of the Challenge Review Team recommended to deny four of the challenges on the grounds that the examinee had not selected the best answer and had failed to present persuasive reasons why another answer should also have

been marked as a correct one. With respect to the fifth question challenged, however, the Team recommended that the Board mark as correct the answer chosen by this examinee (along with the nominal correct answer). They found that the material from the MCP submitted in support of the challenge did create confusion about the correct answer to this question. As a result, the Team recommended that this question not be used on future exams.

A motion was made and seconded to accept the recommendations of the Challenge Review Team and to increase the exam score of this examinee by one point. The motion was approved unanimously.

The Board also directed that the question on the exam that had been found to have two potential correct answers be either (a) removed from the exam and replaced or (b) modified to have only one correct answer.

- E. Communication from an Examinee to the Board about the Exam.** Mr. Fierce reported that an examinee who had failed the exam had submitted an e-mail to the Board containing a suggestion. [The e-mail was given to the Board in their Packets.] Noting in this e-mail that his/her strength/weakness report provided by the Board indicated that s/he had scored poorly only on two “sections” of the exam, this examinee suggested that the Board “*consider in cases like mine that perhaps consideration should be given to crafting individual retake sections.*” S/he added that s/he did not see why it would be necessary to retest on the technical and MCP sections on which s/he had done well.

The Board discussed this suggestion and agreed that at this point in time, with revisions nearly complete on the revised, updated exams, it would be extremely difficult, and overly time consuming, to implement section-by-section retesting. In addition, they reaffirmed their view that the exam was not intended to be a series of discrete sections but was instead meant to be a test of one’s overall technical and regulatory competence. Therefore, **a motion was made and seconded that the Board not initiate changes to the exam of this type at this time. The motion was approved unanimously.**

10. Continuing Education Committee Report:

- A. Course Approval Requests.** Mr. Henry reported that the Committee had met earlier in the day and had voted to make the following recommendations to the full Board:

Sponsor: NGWA

Course Title: Isotopic and Hydrogeologic Characterization of Fractured Rock Settings

Credits Requested: 16 Technical credits

Committee Recommendation: **Approve for 16 Technical credits.**

Sponsor: NEWMOA

Course Title: Vapor Intrusion Mitigation

Credits Requested: 5 Technical credits

Committee Recommendation: **Approve for 5 Technical credits.**

A motion was made and seconded to accept the Committee's recommendations. The motion was approved unanimously.

B. Other Business. The Committee reported that it had received no waiver requests during the past month.

11. **Professional Conduct Committee:** Since all the Board members present at this meeting were also present at the Professional Conduct Committee meeting held earlier in the day, the Board agreed to forego a committee report.

12. **Personnel, Budget, and Fees:**

A. Personnel Report. Mr. Fierce reported that the hiring process to replace Ms. Hartley has been allowed by MassDEP to resume. A new Vacancy Announcement has been posted because most of the candidates who previously applied have taken other positions or are no longer interested in the Board's position. The due date for applications is May 28.

B. FY-08 Budget. Mr. Fierce reported that there have been two new developments in the Legislative budget process. First, the full House voted to budget the same number for the LSP Board that was in the Governor's budget recommendation for the next fiscal year, namely \$377,680. Second, the Senate Ways & Means Committee budget was released on May 16, and it also recommends \$377,680 for the LSP Board. This amount is about \$7,500 more than the Board received in FY-07. The state budget now moves to the full Senate and then to a Conference Committee.

C. Fees. Mr. Fierce reported that in the absence of Ms. Hartley or her replacement, the staff has remained unable to conduct its annual audit of LSP Annual Fee payments to determine who has paid and who has not. Staff is continuing to collect all Application Fees, Exam Fees, Renewal Fees, and fees for all public records requests.

13. **Status of Board Member Replacements by Governor:** Ms. Commerford reported that the recommendation memo was received at EOEEA. She said that she had not yet been able to confirm whether it had moved from there to the Governor's office.

14. **Status of Proposed Legislation Affecting 21E Program:** Ms. Commerford reported that the Joint Committee on Community Development and Small Business has yet to take action on the Bill introduced by Senator Chandler. EOEEA is coordinating the administration's response to the Bill, Ms. Commerford said.

15. **Next Article for LSPA News:** The next deadline for submission of articles is on or about June 6, 2007. Mr. Fierce said the staff had no new disciplinary cases to report on and that it was looking for topic suggestions.
16. **Scheduling of Next Meetings:** The Board agreed to hold its next meeting on Wednesday, June 20, 2007, at Cyn Environmental Services in Stoughton. The July meeting was tentatively scheduled for Wednesday, July 30, 2007, at a location to be determined in or near New Bedford.
17. **Adjournment:** The meeting was adjourned at 4:32 p.m.